

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

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6 **LILLIAM IRIZARRY-CASIANO,**

7 **Plaintiff,**

8 **v.**

Civil No. 13-1051 (GAG)

9 **NOVARTIS PHARMACEUTICALS**
10 **CORPORATION, et al.,**

11 **Defendants.**

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13 **MEMORANDUM OPINION**

14 Plaintiff alleges she was stricken with glaucoma and carpal tunnel from using Defendant's
15 product, Reclast, and that Defendant "did not warn that Reclast was not for people [such as Plaintiff]
16 suffering from" calcium deficiency. (Docket No. 16 at 4.) To succeed in a products liability suit
17 in Puerto Rico, a plaintiff must demonstrate that "there were no warnings or instructions, or those
18 provided were inadequate," and that the "absence of adequate warnings or instructions was the
19 proximate cause of plaintiff's injury." Cruz-Vargas v. R.J. Reynolds Tobacco Co., 348 F.3d 271,
20 276 (1st Cir. 2003).

21 Plaintiff alleges, "Had [D]efendant properly labeled the product, the same would have not
22 been prescribed to [Plaintiff] and she would have not" suffered glaucoma or carpal tunnel. (Docket
23 No. 16 at 4.) The FDA, to wit, warns against its use by those with low calcium and that it can cause
24 bone, joint, or muscle pain. (See Docket No. 13.) Plaintiff, furthermore, cites websites whose
25 credibility the court cannot weigh at this stage. (Id.) Plaintiff satisfies her burden of pleading that
26 the label or package insert insufficiently warned users of the FDA's admonishments. Because the
27 motion to dismiss and sur-reply fail to discuss the specifics of the warning's adequacy on the label
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1 or in the drug's package insert, this issue requires resolution of factual issues beyond the court's
2 current grasp.

3 This issue may not require extensive discovery. "A prescription drug manufacturer has a
4 duty to adequately warn prescribing physicians of the hazards posed by the use of its drugs."
5 Guevara, 845 F.2d at 366. Furthermore, "The warning is directed not to the ultimate user but to the
6 doctor prescribing the drug, who must then 'take into account the propensities of the drug and the
7 susceptibilities of the patient and make an informed decision.'" Id. (citation omitted). The First
8 Circuit has determined that, as a matter of law, when the Physician's Desk Reference and package
9 insert that comes with a drug warn physicians not to give the drug to persons with certain
10 sensitivities, then a warning is adequate. See id. Resolving this issue turns on the contents of the
11 warning, which the court does not presently have. For now, Plaintiff's statement that Defendant
12 failed to properly warn the label to tip off a doctor that a calcium-deficient might suffer potential
13 dangers of Reclast's side-effects. Therefore, Defendant's motion to dismiss at Docket No. 17 is
14 **DENIED.**

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16 **SO ORDERED.**

17 In San Juan, Puerto Rico this 27th day of June, 2013.

18 /S/ Gustavo A. Gelpí
19 GUSTAVO A. GELPI
20 United States District Judge
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